IN THE HIGH COURT JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2559 OF 2000

Kashtakari Sanghatna
& Ors. ..Petitioners.
Vs.
Project Officer,
Dapchari Dairy
Project & Ors. ..Respondents.

Mr.Mihir Desai for the Petitioners.

Mrs. M.P.Thakur, A.G.P. for Respondent Nos.2 and 3.

CORAM: F.I. REBELLO AND
S.J. VAZIFDAR, JJ.
DATED: 1ST MARCH, 2007

P.C. :

The Petitioners seek a declaration that the 78 persons listed in Exhibit "A" are entitled to protection and regularisation of their encroachments on wastelands in the Dapchari Dairy Project and are entitled to peaceful and unencumbered use and occupation of the same. The Petitioners have also sought a Writ of Prohibition, restraining the Respondents from evicting, or dispossessing them or destroying the crops on the said lands.

2. In 1955 the State Government had decided to establish the Dapchari Dairy Project at Dapchari

Village, Dahanu taluka, Thane District, to shift 20,000 heads of milch cattle from areas of Greater Bombay outside the city. The cattle owners were to be granted licences to lands of the project and milk was to be supplied daily by road tankers to the city of Mumbai. For the said project, 2677 hectares of land in ten adivasi villages were acquired. The present Petition is concerned with only about 200 hectares of this land.

3. In or about 1964 the said lands were acquired for the Dapchari District Dairy Products. According to the Petitioners, the adivasis were forcibly dispossessed and evicted from the said lands and were not properly rehabilitated.

4. The Petitioners' contend that the project malfunctioned from inception as the cattle owners refused to move to the project site. As a result thereof, the objectives of the project were modified so as to ensure utilisation of land and development of the weaker sections who had been displaced. The modification provided for establishment of licensee units for the cattle from Mumbai, 1200 farmers units, 800 cluster units and a cross-breeding farm to

provide the farmers units with improved cattle. The project was to supply 1,25,000 litres of milk per day to Mumbai.

5. The Petitioners further contend that not a single licensee unit has been established. Only 7.7% of the targeted farmers' units are functioning. Only 6.75% of cluster units are in operation and the milk production is only 3000 litres per day, which is 2.4% of the target. Each farmer is in debt of more than Rs.1,00,000/-. The adivasis who are project affected persons, received meagre compensation.

6. It is as a result of the combination of all these factors that the Petitioners encroached on the lands once again in 1976-77. The Petitioners' basic occupation is of farming on the said lands.

7. Some of the project affected persons filed Writ Petition No.1778 of 1986 in the Supreme Court, seeking regularisation of their encroachments. On 15.2.1988 the Supreme Court passed an order inter-alia directing the State of Maharashtra to appoint responsible officers to examine the claims of the adivasis who were in possession of the land and

decide the claim of regularisation in accordance with law including certain instructions issued by the State of Maharashtra.

8. In 1978, the State Government issued a Government Resolution for regularising encroachments. In 1991 a further G.R. was issued, which provided for an extension of similar protection to cultivators on Government wasteland. According to the Petitioners, they are entitled to the benefit of the said G.Rs. The relevant part of the G.R. dated 27.12.1978 reads as under :-

> "RESOLUTION
>
> Orders were issued in the past for regularisation of encroachments on Government wastelands, revenue forest lands, forest lands in charge of forest departments (in Nashik and Thane Districts) and Gairans, made for cultivation subject to certain terms and conditions. Accordingly action has been taken by the officers of the Forest Department and of the Revenue Department to regularise these encroachments. In a number of such cases, however, the encroachments are yet to be dealt with according to those orders. Besides new encroachments have also taken place. In most of these cases the encroachers

belong to backward classes or economically weaker sections of the community. Government have therefore decided that all the subsisting encroachments on government lands (including forest lands) which were existing on 31st March 1978 should be regularised and for that purpose is pleased to direct in exercise of its power, under section 40 of the Maharashtra Land Revenue Code, 1966, and all other powers enabling in that behalf as under:

2. **Eligibility for regularisation-** All subsisting encroachments on Government wastelands, gairan lands, revenue forest lands and forest lands in charge of the Forest Department made for cultivation, which existed on 31.3.1978 should be regularised provided :

.....
....."

The cut-off date was extended by the G.R. dated to 28.11.1991 to 14.4.1991.

9. On behalf of the Respondents, it was submitted that the said G.Rs. are not applicable to the present case as the property in dispute is "project land". There is no dispute that the land is "Gairan" land. The main contention however is that though it may be gairan land, it falls within the project area and being project land, the said 200 hectares are not

covered by the G.Rs.

10. In paragraph 4 of the affidavit in reply, filed on behalf of the Respondents, it is admitted that on the said lands, due to percolation, it is easy to grow grass being situated on both sides of the canal. It is further admitted that the land is of importance to the project as it provides grass to the animals. Thus the fact that the said lands are gairan is not disputed. The only contention, as noted above, is that as the same fall within the project lands they are not covered by G.Rs.

11. It is difficult to accept this submission as there is nothing in the G.Rs. which excludes project lands. The only qualification is that the encroachments ought to have been existing on 31.3.1978. This date has been extended to 14.4.1991 by the G.R. dated 28.11.1991.

12. The Respondents also submitted that many of the project affected persons were given compensation and various other facilities. Further community centres, schools, water supply schemes, internal roads and drainage are constructed and provided in ten nearby

villages, where the persons were rehabilitated. Moreover, as far as possible, one family member of the project affected persons were given employment in the project of 2677 hectares, acquired by the Respondents.

13. What is important to note however is the Respondent's contention that most of the Petitioners encroached upon the property only after the cut off date and in fact after February, 2000. If that is so, naturally, they would not be entitled to the benefits of the said G.Rs. However, if the Petitioners had encroached on the property prior to the cut off date, they would be entitled to the benefit of the G.Rs. even though the properties fell within the project lands, for, as we have noted, there is no exclusion in the G.R., of such lands.

14. In the circumstances, Respondent No.3 shall appoint an officer who will determine whether or not in respect of each of the Petitioners the encroachment existed as on the cut off date viz. 14.4.1991. In respect of those Petitioners who are within the cut off date, the Respondent shall give the benefit of the said G.Rs. dated 27.12.1978 and

28.11.1991.

15. Till the decision and for a period of four weeks thereafter, the Respondents shall maintain status quo in respect of the lands occupied by the Petitioners if the orders/findings are against the Petitioners.

16. The Writ Petition is accordingly disposed of. There shall be no order as to costs.

(S.J. VAZIFDAR, J.) **(F.I. REBELLO, J.)**